IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6469 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAVED @ MUNNA MUSTAFA PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6469 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 17-12-2003, by

which he is detained under PASA as a "dangerous person". Along with the said order, the petitioner is served with the grounds of detention. In the grounds of detention, there is a reference about four criminal cases registered against the petitioner. All these cases are registered at various police stations of Surat city under Section 379 of I.P.C. It is alleged that the petitioner is committing theft of gold chains. After considering aforesaid cases as well as after considering statements of some witnesses, the detaining authority has passed the order of detention, which is impugned in this petition.

2) Learned advocate for the petitioner submitted that the last incident registered against the petitioner is of 17-07-2003, and after a considerable time of about five months the order of detention was passed on 17-12-2003. In this behalf, reference is made to the decision of this Court in Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City & Others reported in 1997 (1) G.L.H. 381 wherein this Court has observed in Para 21 as under:-

> "21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appeared to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy

reported in 1993(2) Suppli. SCC 61."

3) It is also submitted by the learned advocate for the petitioner that at the time of passing of the order, the petitioner was already in judicial custody as bail application of the petitioner was rejected in one of the cases yet, the detaining authority has observed that the petitioner may get bail from the Sessions Court and may continue his activity. It is also submitted that the detaining has failed to state, as to on what basis, it has reached to the conclusion that the detenu will be released on bail and will continue his activity. To substantiate his say, the learned advocate for the petitioner has relied upon an unreported judgement of this Court delivered in Special Civil Application No.8881/2001 dated 17-01-2001.

4) Unfortunately, no affidavit in reply has been filed by the authority explaining the delay in passing the detention order after the occurrence of last so called incident. Therefore, the averment made in the petition is not controverted by the authority. Under these circumstances, there is no alternative but to set aside the order of detention on the ground of delay in passing the detention order from the date of last incident.

5) Ms.Raval, learned AGP, has submitted that the petitioner is a habitual offender and he is in habit of committing theft of gold chains of innocent people. If that be so, it is for the concerned public prosecutor to oppose the bail application of the petitioner and it is for the concerned Magistrate to decide such application on its own merits and in accordance with law, however, this Court is not required to express its opinion on this point.

6) For the foregoing reasons, this petition is allowed. The order of detention dated 17-12-2003 is quashed and set aside. The detenu, Javed alias Munna Mustafa Patel is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
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